



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

WC-15J

SEP 30 2015

CERTIFIED MAIL 7014 2870 0001 9580 8051
RETURN RECEIPT REQUESTED

Ex. 6 (Personal Privacy)

New Horizons Dairy LLC

Ex. 6 (Personal Privacy)

Subject: Administrative Consent Order

Dear Ex. 6 (Personal Privacy):

Enclosed you will find the final Administrative Order on Consent (Agreement) to mitigate potential violations of Sections 301 of the Clean Water Act (CWA), 33 U.S.C. § 1311, that the U.S. Environmental Protection Agency discovered at the New Horizons Dairy LLC facility in De Pere, Wisconsin.

As you know, on April 29, 2014, the EPA inspected your facility. At the time of the inspection, EPA identified potential CWA violations. After the inspection, you voluntarily made changes to your operation that included; moving the used bedding stacked outside the heifer building, moving the stockpile on the berm of the earthen storage structure, and moving the open bag of feed to a location that would not discharge to an intermittent waterway. You also instituted better housekeeping practices off the concrete feed pad and bunkers.

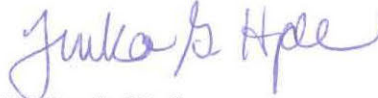
On July 30, 2015, EPA e-mailed you a draft Agreement, which outlines the remaining compliance measures to permanently capture manure and process wastewater from operations at your facility.

On August 28, 2015, you and Cheryl Burdett had a conference call discussing your comments on the Agreement. You requested changes to paragraphs 46, 62 and 63 in the Agreement. EPA agreed to the requested change to paragraph 46 from two hundred and seventy days to three hundred and sixty-five days. EPA did not make changes to paragraphs 62 and 63.

On September 8, 2015, we received your signature on the revised Agreement.

If you have any questions or concerns regarding this action, please contact Cheryl Burdett at (312) 886-1463 or burdett.cheryl@epa.gov. Your cooperation in this matter is appreciated.

Sincerely,



Tinka G. Hyde
Director, Water Division

Enclosure

Cc: Benjamin Uvaas, WDNR

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:

New Horizons Dairy LLC
Ex. 6 (Personal Privacy)

Respondent

)
) **CONSENT ORDER FOR**
) **COMPLIANCE UNDER SECTIONS**
) **308 and 309 OF THE**
) **CLEAN WATER ACT**
)
) **DOCKET NO. V-W-15-AO-09**

I. INTRODUCTION

1. The U.S. Environmental Protection Agency (EPA) and New Horizons Dairy LLC (Respondent) enter voluntarily into this Consent Order (Order) pursuant to Sections 308(a) and 309(a) of the Clean Water Act (Act), 33 United State Code (U.S.C.) §§ 1318(a) and 1319(a).
2. The Administrator of EPA has delegated the authority to issue such orders to the Regional Administrator of EPA, Region 5, who has re-delegated this authority to the Director of the Water Division, EPA, Region 5.

II. STATUTORY BACKGROUND

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutants to the waters of the United States by any person except in compliance with, *inter alia*, a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
4. Pursuant to the CWA and EPA regulations, the owner or operator of a concentrated animal feeding operation (CAFO) which discharges any manure, litter, or process wastewater must seek coverage under an NPDES permit. Section 402 of the CWA, 33 U.S.C. § 1342; 40 C.F.R. § 122.23(a) and (b).
5. Pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a), EPA may require the owner or operator of any point source to establish and maintain records; make reports; install, use, or maintain monitoring equipment or methods; sample effluents; and provide other information as may be reasonably required to carry out the objectives of the CWA.
6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the NPDES by which the Administrator may issue permits for the discharge of pollutants to the waters of the United States subject to certain conditions.

7. EPA has approved the State of Wisconsin to issue NPDES permits under Section 402(b) of the CWA, 33 U.S.C. § 1342(b). The Wisconsin Department of Natural Resources is the NPDES permitting authority for the State of Wisconsin. WDNR refers to the NPDES permits that it issues as Wisconsin Pollutant Discharge Elimination Permits. EPA retains the authority to enforce the CWA in Wisconsin.

III. DEFINITIONS

8. All terms used but not defined in this Order shall have the meanings provided to them in the CWA and EPA regulations promulgated under the CWA.
9. “Animal feeding operation” or “AFO” means, among other things, “a lot or facility where animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.” 40 Code of Federal Regulations (C.F.R.) § 122.23(b)(1).
10. “Concentrated animal feeding operation” or “CAFO” means, among other things an AFO that is defined as a Large CAFO or as a Medium CAFO under federal regulations. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes. 40 C.F.R. § 122.23(b)(2).
11. “Discharge” or “discharge of a pollutant” means, among other things, any addition of any pollutant to navigable waters from any point source. Sections 502(12), (16) of the Act, 33 U.S.C. §§ 1362(12), (16); 40 C.F.R. § 122.2.
12. “Facility or activity” means any NPDES “point source” or any other facility or activity (including land or appurtenances thereto) that is subject to regulations under the NPDES program. 40 C.F.R. § 122.2.
13. “Large CAFO” means, among other things, an AFO that stables or confines as many or more than the numbers of animals specified in any of the following ranges: 1,000 cattle other than mature dairy cows or veal calves; 700 mature dairy cows, whether milked or dry; 1,000 veal calves; cattle includes but not limited to heifers, steers, bulls, and cow/calf pairs.
14. “Manure” means “manure, bedding, compost, and raw materials or other materials commingled with manure or set aside for disposal.” 40 C.F.R. § 122.23(b)(5)
15. “Elements of a Nutrient Management Plan” include: How you plan to manage nutrients and waste for the nine minimum elements of your operation: Adequate Storage Capacity; Proper Management of Dead Animals; Clean Water Management; Preventing Your Animals from Contacting Waters of the United States; Proper Chemical Handling; Implementing Conservation Practices to control Nutrient Loss; Testing Manure; Litter; Process Wastewater; Soil; Methods for the Land Application of manure, litter; and process Wastewater; and Keeping Records. 40 C.F.R. § 122.42

16. "Person" means, among other things, an individual, association, partnership, or corporation. Section 502(5) of the Act, 33 U.S.C. § 1362(5); 40 C.F.R. § 122.2.
17. "Point source" means, among other things, "any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, ... [or] concentrated animal feeding operation ... from which pollutants are or may be discharged." Section 502(14) of the Act, 33 U.S.C. § 1362(14); 40 C.F.R. § 122.2.
18. "Pollutant" means, among other things, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, wrecked or discarded equipment, rock, sand, cellar dirt, and agricultural waste discharged into water. Section 502(6) of the Act, 33 U.S.C. § 1362(6); 40 C.F.R. § 122.2.
19. "Process wastewater" means water directly or indirectly used in the operation of the animal feeding operation for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding. 40 C.F.R. § 122.23(b)(7).
20. "Production area" means that part of the facility that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment area. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility and any area used in the storage, handling, treatment, or disposal of mortalities. 40 C.F.R. § 122.23(b)(8).
21. "Site" means the facility or facilities owned and/or operated by Respondent located at or about or adjoining **Ex. 6 (Personal Privacy)** including, but not limited to the land application area, the production area, and adjacent land used in connection with the land application area and/or production area.
22. "Waters of the United States" means, in accordance with 40 C.F.R. § 122.2, among other things:
- a. all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce;
 - b. all interstate waters;

- c. all other waters such as intrastate lakes, rivers, streams (including intermittent streams), the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters;
- d. all impoundments of waters otherwise defined as waters of the United States under this definition; and
- e. tributaries of waters identified in paragraphs (a) through (d) of this definition.

IV. GENERAL PROVISIONS

- 23. Respondent has had the opportunity to confer with and submit information to EPA concerning the validity and provisions of this Order.
- 24. EPA and Respondent recognize that this Order has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Order do not constitute an admission of liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Order, the validity of the findings of facts, conclusions of law, and determinations (Findings) in this Order.
- 25. Respondent agrees to comply with and be bound by the terms of this Order and further agrees that the Respondent will not contest the basis or validity of this Order or its terms.
- 26. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any issue of fact or law set forth in this Order, including, but not limited to, any right of judicial review of this Section 309(a)(3) Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.
- 27. Respondent reserves the right to contest any future enforcement activity by EPA against Respondent, including, but not limited to any future enforcement activity relating to any future discharge or to alleged noncompliance with this Order.
- 28. This Order applies to and is binding upon EPA and upon Respondent and Respondent's successors and assignees. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Order. Respondent must give notice of this Order to any successors in interest prior to transferring ownership and must simultaneously verify to EPA, at the above address, that it has given the notice to whom ownership is being transferred including the legal name and current contact information for the transferee.
- 29. Each party agrees to bear their own costs and attorney fees incurred as a result of this matter and Order.
- 30. Respondent must ensure that any contractors and subcontractors who are retained to perform work under this Agreement receive a copy with this Agreement within 14 days after the

Effective Date of this Order or after the date of such retention. Respondent will be responsible for any noncompliance with this Agreement.

V. FINDINGS

A. Site

31. Respondent is a registered corporation in the State of Wisconsin, and as such, Respondent is a "person" as that term is defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5), and implementing regulations at 40 C.F.R. § 122.2.
32. Respondent is a person who owns or operates a large dairy operation facility located at 4240 Rosin Road De Pere, Wisconsin 54115.
33. The Site is an animal feeding operation because:
 - a. the Site includes lots or facilities where mature dairy (milking and/or dry) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period, within the meaning of 40 C.F.R. § 122.23(b)(1)(i); and
 - b. crops, vegetation, forage growth, or post harvest residues are not sustained in the normal growing season over any portion of those lots or facilities, within the meaning of 40 C.F.R. § 122.23(b)(1)(ii).
34. The Site is a large CAFO because it confines 800 mature dairy cows.
35. As a CAFO, as described above, the Site is subject to the effluent guidelines in 40 C.F.R. Part 412.
36. The Site is a Point Source.
37. The Site is covered under WPDES permit WI-00625280-02-0.
38. Wisconsin Department of Natural Resources (WDNR) refers to the National Pollutant Discharge Elimination System (WPDES) permit as the Wisconsin Pollutant Discharge Elimination System permit.

B. EPA Investigation

39. On April 29, 2014, personnel from EPA conducted an inspection at and around the Site. A copy of EPA's inspection report is included as Attachment 1 to this Order.
40. During the Inspection, EPA personnel made observations including the following:

- a. EPA observed wastewater discharging from the silage bunkers and the concrete pad surrounding the silage bunkers into the storm water pathway that flows south into an unnamed intermittent tributary that flows northeast into Apple Creek. Section 1.1 and 1.3 of the WPDES permit.
 - b. EPA observed process wastewater discharging from around the open feed bag located east of the Dry Feed Barn and north of the South Access Road through the culverts into the storm water pathway that flows south into an unnamed intermittent tributary that flows northeast into Apple Creek. Sections 1.1 and 1.3 of the WPDES permit.
 - c. EPA observed processed wastewater discharging from the stacked pile of manure and used bedding located on the south side of the Earthen Storage Structure into the storm water pathway that was flowing northwest toward Apple Creek. Section 1.1 and 1.3 of the WPDES permit.
 - d. EPA observed process wastewater on the concrete pad east of the Calf Barn attached to the Fresh Cow Barn. The process wastewater could overflow the concrete berm and flow down the embankment on the east side of the facility discharging into Apple Creek because the pad was not designed, operated, and maintained to store process wastewater. Section 1.1 and 1.3 of WPDES permit.
 - e. EPA observed process wastewater from the feedlot on the north side of the Freestall Barn flowing toward the tile inlet that outlets to Apple Creek. Section 1.1 and 1.3 of the WPDES permit. Manure near and under the Fresh Cow Barn was flowing toward the storm water pathway.
41. EPA observed process wastewater discharging as described in the above paragraphs. The process wastewater flows to an intermittent waterway that flows to an unnamed intermittent tributary that flowed into Apple Creek. Apple Creek is a perennial waterway and a tributary to the Fox River a traditional navigable waterway.

C. Alleged Violations

42. The Discharges described above are Discharges of a Pollutant(s) prohibited by the Act.
- a. New Horizons Dairy LLC was in violation of their WPDES permit at the time of their inspection on April 29, 2014:
 1. EPA observed wastewater discharging from the silage bunkers and the concrete pad into the storm water pathway that flows south into an unnamed intermittent tributary that flows northeast into Apple Creek. Section 1.1 and 1.3 of the WPDES permit.
 2. EPA observed process wastewater discharging from around the open feed bag located east of the Dry Feed Barn and north of the South Access

Road through the culverts into the storm water pathway that flows south into an unnamed intermittent tributary that flows northeast into Apple Creek. Sections 1.1 and 1.3 of the WPDES permit.

3. EPA observed process wastewater discharging from the stacked pile of manure and used bedding located on the south side of the Earthen Storage Structure into the storm water pathway that was flowing northwest toward Apple Creek. Section 1.1 and 1.3 of the WPDES permit.

43. As a CAFO which Discharges, the Site is subject to the NPDES permitting requirements of Section 402 of the Act, 33 U.S.C. § 1342, and 40 C.F.R. Part 122.

VI. CONSENT ORDER

44. It is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Order, including but not limited to, all attachments to this Order and all documents incorporated by reference into this Order, including the following Compliance Requirements.

VII. COMPLIANCE REQUIREMENTS

A. Permanent and Interim Measures

45. Upon the effective date of this Order, Respondent shall cease all unpermitted discharges from the Site.
46. Within thirty (30) calendar days of the effective date of this Order, Respondent shall develop and submit to EPA and WDNR for approval a Compliance Plan which describes in detail the actions to be taken by the Respondent to permanently remedy all discharges from the site. The Compliance Plan shall include a completion schedule which shall not exceed three hundred and sixty-five (365) days from the effective date of this Order.
47. After receipt and review of Respondent's Compliance Plan as required by this Order, EPA shall notify Respondent whether the Compliance Plan and the schedule are acceptable by EPA. Once approved by EPA, the Compliance Plan and schedule shall be fully incorporated into and made an enforceable part of this Order. Upon receipt of EPA's written approval, Respondent shall commence work in accordance with the schedule and provisions contained therein.
48. Upon the effective date of this Order, Respondent shall put into place interim measures to ensure that there are no unpermitted discharges while the Compliance Plan is being developed, reviewed, and implemented.
49. Within thirty (30) calendar days after the effective date of this Order, Respondent shall submit to EPA written documentation (e.g. as-built, photographs, affidavits, etc.) concerning the interim measures implemented according to this Order, showing that Respondent completed installation of the interim measures.

50. Within 90 days of the effective date of this Order, Respondent shall submit New Horizons Dairy LLC's Nutrient Management Plan with certification by a Nutrient Management Planner to EPA that:
- a. ensures adequate storage of manure, litter, and process waste water, including procedures to ensure proper operation and maintenance of the storage facilities;
 - b. ensures that mortalities (*i.e.*, dead animals) are not disposed of in a liquid manure, stormwater, or process waste water storage or treatment system that is not specifically designed to treat mortalities;
 - c. ensures that clean water is diverted, as appropriate, from the production area;
 - d. prevents direct contact of confined animals with waters of the United States;
 - e. ensures that chemical wastes and other non-livestock wastes handled on-site are not disposed of in any manure, litter, process waste water, or stormwater storage or treatment system unless such system is specifically designed to treat such chemicals and other contaminants;
 - f. identifies site-specific conservation practices to be implemented, including, as appropriate, buffers, or equivalent practices, to control discharges of manure, litter, or process waste water to waters of the United States;
 - g. identifies protocols for appropriate testing of manure, litter, process waste water, and soil;
 - h. establishes protocols to land apply manure, litter, and process waste water in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process waste water;
 - i. identifies specific records that will be maintained to document the implementation and management of the requirements of the Order;
 - j. defines the total number of acres for land application covered by the Nutrient Management Plan;
 - k. describes the total number of acres under the control of Respondent that were used for land application of manure, litter, and process waste water in the last 12 months; and
 - l. includes a summary of all manure, litter, and process waste water discharges from the production area that have occurred in the previous 12 months, including the date, time, and approximate volume of such discharges.

B. Discharge Minimization and Notification

51. Within 30 days of the effective date of this Order, Respondent shall post at the Site, a summary of procedures to effectively respond to any spill or discharge to waters of the United States, and shall ensure that all employees are aware of and follow those procedures. The posted procedures shall contain detailed response and instructions which shall include, but not be limited to, the names of the officials to be notified, State and Federal Agencies to be notified, local or downstream public water supply and public health entities to be notified, appropriate phone numbers, addresses, safety precautions, and immediate actions to abate the occurrence.
52. This Order does not authorize Respondent to discharge pollutants to waters of the United States at or from the site, and any such discharges are subject to enforcement. Upon the effective date of this Order and until Respondent receives notification from EPA that they have satisfied all requirements of this Order, if for any reason, Respondent discharges pollutants to waters of the United States, Respondent must visually monitor the discharge and immediately notify the EPA by contacting Cheryl Burdett by telephone (312)886-1463, and by e-mail burdett.cheryl@epa.gov. Respondent must also immediately notify WDNR's 24-hour spill emergency hotline at 1-800-943-0003. In addition, Respondent must document the following information and submit a written report to the EPA and WDNR within five days of becoming aware of the discharge, including:
- a. The cause of the discharge, including an estimate of the discharge volume, an estimate of the flow rate if the discharge is continuing and any analytical data;
 - b. the area receiving the discharge (i.e., field, ditch, stream, or other description);
 - c. the specific location of the discharge;
 - d. the period of discharge, including exact beginning and end dates and times, and if not corrected, the anticipated time the discharge is expected to continue;
 - e. steps taken or to be taken to respond to, contain and mitigate the discharge;
 - f. corrective action taken to prevent recurrence of the discharge; and
 - g. apparent impacts to health or the environment resulting from the discharge, including, but not limited to, threats to surface water supplies, waters supply wells, recreational areas, and water quality.

C. Record Retention and Reporting

53. Upon the effective date of this Order, Respondent shall maintain at the site and make available to EPA and WDNR personnel upon request a complete copy of the Nutrient Management Plan and copies of all records identified by the Nutrient Management Plan.

54. Respondent shall submit an annual report to EPA and WDNR no later than March 15 of each calendar year following the effective date of the Order. In each annual report, Respondent shall include the following information for the calendar year prior to submittal of the annual report.
- a. The number and type of animals, whether in open confinement or housed under roof;
 - b. Estimated amount of total manure, litter, and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);
 - c. Estimated amount of total manure, litter, and process wastewater transferred to other persons by the CAFO in the previous 12 months;
 - d. Total number of acres for land application covered by the Nutrient Management Plan developed in accordance with 40 C.F.R. § 122.42(e)(1);
 - e. Total number of acres under control of the CAFO that were used for land application of manure, litter, and process wastewater in the previous 12 months;
 - f. Summary of all manure, litter, and process wastewater discharges from the production area that have occurred in the previous 12 months, including date, time and approximate volume; and
 - g. A statement indicating whether the current version of the CAFO's Nutrient Management Plan was developed and approved by a certified nutrient management crop planner; and
 - h. The actual crop(s) planted and actual yield(s) for each field, the actual nitrogen and phosphorus content of the manure, litter, and process wastewater, the results of calculations conducted in accordance with 40 C.F.R. § 122.42(e)(5)(i)(B) and 40 C.F.R. § 122.42 (e)(5)(ii)(D) and the amount of manure, litter, and process wastewater applied to each field during the previous 12 months; and for any CAFO that implements a nutrient management plan that addresses rates of application in accordance with 40 C.F.R. § 122.42(e)(5)(ii), the results of any soil testing for nitrogen and phosphorus taken during the preceding 12 months; the data used in calculations in accordance with 40 C.F.R. 122.42(e)(5)(ii)(D) and the amount of supplemental fertilizer applied during the previous 12 months.

VIII. SUBMITTALS AND ACCESS TO INFORMATION

A. Submittals

55. Any documents or notifications required by this Order shall be submitted to EPA by Respondent to the following address:

Water Enforcement Compliance Assurance Branch (WC-15J)
Attention: Cheryl Burdett
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

56. Any documents or notifications required by this Order shall be submitted to WDNR by Respondent to the following address:

Wisconsin Department of Natural Resources
Agricultural Runoff Program
Attn: Ben Uvaas
WT/3, 101 South Webster Street
PO Box 7921
Madison, Wisconsin 53707

57. All submittals made pursuant to this Order shall be returned under an authorized signature containing the following certifications:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false statements and information, including the possibility of fines and imprisonment for knowing violations.

58. If the signatory at any time after submittal of information finds that any portion of the submittal is false or incorrect, the signatory shall notify EPA immediately. Knowing submittal of false information to EPA in response to this Order may subject Respondent to criminal prosecution under Section 309 (c) of the CWA, 33 U.S.C. § 1319(c), and 18 U.S.C. §§ 1001 and 1341.

B. Access to Information

59. Respondent shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the site or to the implementation of this Order, including, but not limited to sampling, analysis, chain of custody records, manifests, receipts, reports, sample traffic routing correspondence, or other documents or information related to this Order. Respondent shall also make available to U.S. EPA, for purpose of investigations, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning activities conducted pursuant to this Order.

C. Confidentiality of Submissions

60. Respondent may not withhold information because of a claim of confidentiality. However, pursuant to 40 C.F.R. Part 2, Subpart B, you may assert a claim of business confidentiality regarding any portion of the information submitted in response to this Order, as provided in 40 C.F.R. § 2.203(b). Effluent data (as defined by 40 C.F.R. § 2.302(a)(2)) and information in NPDES permit applications is not entitled to confidential treatment 40 C.F.R. § 122.7. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the site. Information subject to a business confidentiality claim is available to the public only to the extent, and by means of the procedures, set forth in 40 C.F.R Part 2, Subject B.
61. If you do not assert a claim of business confidentiality when you submit the information, EPA may make the information available to the public without further notice.
62. EPA may use any information submitted in response to this Order in support of an administrative, civil or criminal action against Respondent.

D. Site Access

63. If the Site, or any other property where access is needed to implement this Order, is owned or controlled by Respondent, then Respondent shall, commencing on the Effective Date, provide EPA, WDNR, and their representatives, including contractors, with access at all reasonable times to the site, or such other property, for the purpose of conducting any activity related to this Order.
64. Notwithstanding any provisions of this Order, EPA and WDNR retain all of their access authorities and rights, including enforcement authorities related thereto, under the CWA and any other applicable statutes or regulations.

E. Enforcement and Legal Obligations

65. This Order is not a permit under the CWA, and does not waive or modify Respondent's ongoing obligation and responsibility to ascertain and comply with all other applicable federal, state, and local laws, regulations, ordinances, permits or licenses. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations.
66. EPA reserves all rights and remedies, legal, and equitable, available to address any violation cited in this Order, any other violation of the CWA, and to enforce this Order. Neither issuance of this Order by EPA nor compliance with its terms precludes further enforcement action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, for violations cited herein, for any other violations of the CWA committed by Respondent, or to enforce this Order.
67. The signatories to this Order certify that they are authorized to execute and legally bind the parties they represent.
68. Failure to comply with this Consent Order may subject Respondent to penalties of up to \$37,500 per day for each violation under Section 309 of the CWA, 33 U.S.C. § 1319 and 40 C.F.R. Part 19.

F. Modifications

69. If Respondent seeks permission to deviate from any approved plan or schedule, Respondent shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving written approval from EPA.
70. No informal advice, guidance, suggestion, or comment by EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

G. Certification of Completion

71. Within 30 days after Respondent concludes that it has complied with all requirements of this Order, Respondent shall submit to EPA a written certification of completion describing all actions taken to comply with the requirements of this Order.
72. After receipt and review of Respondent's certification submitted pursuant to all requirements of this Order, EPA may notify Respondent whether all requirements of this Order have been satisfied.

IX. EFFECTIVE DATE

73. This Order shall be effective upon the date that this Order is signed by the Director, Water Division, U.S.EPA, Region 5.

ADMINISTRATIVE CONSENT ORDER
In the Matter of New Horizons Dairy LLC
Docket No. V-W15-AO-

This undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Order and to bind the party he/she represents to this document.

Agreed this 8th day of Sept, 2015.

For Respondent

By: **Ex. 6 (Personal Privacy)**

Title: owner/member

It is ORDERED and Agreed this 29th day of September, 2015.

By: Tinka G. Hyde

Tinka G. Hyde
Director, Water Division
United States Environmental Protection Agency
Region 5



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

DEC 15 2014

REPLY TO THE ATTENTION OF:
WC-15J

CERTIFIED MAIL 7011 1150 0000 2639 5223
RETURN RECEIPT REQUESTED

Ex. 6 (Personal Privacy)

New Horizons Dairy LLC

Ex. 6 (Personal Privacy)

Subject: Clean Water Act Compliance Evaluation Inspection Report

Dear [REDACTED] Ex. 6 (Personal Privacy):

On April 29, 2014, U.S. Environmental Protection Agency conducted an inspection of your facility, New Horizons Dairy LLC in De Pere, Wisconsin. The purpose of the inspection was to evaluate compliance with your Wisconsin Pollutant Discharge Elimination System (WPDES) permit. Enclosed is a copy of EPA's inspection report.

New Horizons Dairy LLC is a large Concentrated Animal Feeding Operation (CAFO) as defined in 40 C.F.R. § 122. Agricultural operations, such as New Horizons Dairy LLC, have been shown to be sources of pollution to local water bodies through improper management resulting in manure and process wastewater runoff at the production and land application areas of the CAFO. EPA observed multiple areas of concern during the inspection. The potential violations and areas of concern are noted in the inspection report. It is important to address these areas of concern as they can contribute pollutants to tributaries of Apple Creek and directly into Apple Creek.

Please provide a written response to the issues identified in the report within 30 days. In your response, include a description of corrective actions taken. Your response should be mailed to:

Cheryl Burdett
Water Division, WC-15J
U.S. EPA Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

If you have any questions or concerns regarding this letter, or the inspection report, please contact Cheryl Burdett at (312) 886-1463 or burdett.cheryl@epa.gov. Your cooperation in this matter is appreciated.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ryan Bahr", written over a horizontal dashed line.

Ryan Bahr, Chief, Section 2
Water Enforcement and Compliance Assurance Branch

Enclosure

Cc: Benjamin Uvaas, Wisconsin Department of Natural Resources